

## REMARKS/ARGUMENTS

Claims 1-44 are pending. Claims 1, 17, and 31 have been amended. The amendments are supported by the application as filed, for example at page 23, lines 21-34 and page 24, lines 1-12. No new matter has been added.

### Nonstatutory Obviousness-type Double Patenting Rejection

Claims 17-44 were rejected on the ground of nonstatutory obviousness-type double patenting in view of claims 1-9 and 11-13 of U.S. Patent No. 6,765,864.

A terminal disclaimer is enclosed with this response.

### Rejection of the Claims under 35 U.S.C. § 102

Claims 17-20, 23-25, 27-34, 37-38, and 42-44 were rejected under 35 U.S.C. § 102(e) as anticipated by Lin, U.S. Patent No. 6,405,250 (hereinafter “Lin”).

It is respectfully submitted that the claims are not anticipated by Lin for at least the following reasons.

By way of example, claim 17 defines a method for providing dynamic feedback control of network elements in a data network. Claim 17 has been amended to recite:

dynamically analyzing at least a portion of said received information based upon selected guidelines to determine whether a performance of at least a portion of said network conforms with a **predetermined application specific criteria;**

automatically and dynamically reporting results of said analysis to the administration system for dynamically responding to said results when the performance of the portion of said network fails to conform with the **predetermined application specific criteria;**

wherein the response is selected to dynamically alter a performance policy of the portion of the network to conform with the **predetermined application specific criteria;**

wherein the reporting is dynamically triggered by the performance of the portion of said network failing to conform with the **predetermined application specific criteria;**

(Emphasis added).

According to conventional network management techniques, a service provider may “guarantee to provide a minimum amount of bandwidth for handling client traffic” (Page 9, line 14) to a client, including values such as “the committed information rate (CIR), which specifies the rate at which the virtual circuit will accept data from the consumer” (Page 9, lines 18-20) and

the excess information rate, which “represents the excess bandwidth which the service provider will attempt to deliver to the consumer.” (Page 9, line 31 through page 10, line 1). However, as described in the application as filed, conventional network management techniques may have one or more disadvantages:

Moreover, significant delays may be experienced when attempting to modify or reconfigure parameters associated with a virtual circuit. For example, let us suppose that the consumer initiates a video conferencing application between client 102 and server 114. Further, let us suppose that the current CIR and EIR bandwidth values for virtual circuit 150 are insufficient for supporting high quality video/voice applications, resulting in the client 102 receiving poor quality video images and voice information from server 114. In order to overcome this problem, a human operator at the client side may send a request to the service provider to increase the CIR value for the virtual circuit 150.

(Page 11, lines 8-16).

Claim 17 recites various features related to ensuring conformance of the network with predetermined application specific criteria. Embodiments of claim 17 may provide certain benefits as discussed, for example, on page 12, lines 9-13, of the application as filed:

Using the technique of the present invention, a dynamic feedback-based adaptive network may be provided for automatically detecting a client’s need for increased bandwidth, and for automatically and dynamically reconfiguring the appropriate network elements to provide sufficient bandwidth on the virtual circuit to support the user’s current application(s).

Lin describes a system in which a management agent associated with a particular network element communicates information associated with the network element to a network management system for analysis and action. (Col. 7, lines 27-34). The Office Action seems to suggest that the analysis performed by the Trend Analyzer in Lin is analogous to the dynamic analysis recited in claim 17. For example, on page 2, lines 21-24, the Office Action states:

Dynamically analyzing at least a portion of said received information based upon selected guidelines to determine whether a perform of a least a portion of said network conforms with a predetermined criteria (Trend Analyzer per Fig 4 analyzes information received from the NEs per Fig 1 based upon guidelines to determine whether parameters have exceed thresholds)

However, Lin states “trend analyzer 402 extrapolates the movement of NE operating points and consults the network-wide model in database 401 to predict trends in future network

transitions.” (Col 7, lines 57-60). Thus, the trend analyzer in Lin seems to be predicting a future state of the network element, not determining whether the performance of the network element conforms with any predetermined criteria. Further, Lin fails to disclose or suggest that the trend analyzer 402 performs any analysis associated with any *application specific* criteria. Lin does not suggest, for example, that the trend analyzer 402 is configured to detect a client’s need for increased bandwidth according to an application specific network use. Therefore, the cited passage of Lin fails to disclose or suggest any operation related to “dynamically analyzing at least a portion of said received information based upon selected guidelines to determine whether a performance of at least a portion of said network conforms with a predetermined application specific criteria,” as recited in claim 17 as amended.

When discussing the information transmitted by a network element, Lin does state that “The choice of representative parameters is application-dependent.” (Col. 3, lines 35-36). However, the parameters do not include a predetermined application specific criteria as recited in the claims. The information transmitted includes parameters such as “throughput, blocking rate, latency, available resources, etc.” (Col. 3, lines 31-33) of a particular network element. Lin states that these parameters can each “take on a set of values” and together can characterize the “operating status” or “health” of the network element (Col. 3, lines 26-30). Thus, the parameters seem to be measured or determined values, the combination of which “uniquely identifies a state” (Col. 3, lines 54-55) of the network element at a specific time, not predetermined criteria of any kind, much less application specific predetermined criteria.

Without more, the statement in Lin that “The choice of representative parameters is application-dependent” (Col. 3, lines 35-36) seems to suggest that, for example, monitoring or transmitting different parameters might be appropriate for different types of network elements or different types of networks. This is fundamentally different than determining whether a performance of the network “conforms” with a predetermined application specific criteria, as recited in claim 17.

Since Lin fails to disclose or suggest dynamically analyzing received information to determine whether at least a portion of the network conforms with a predetermined application specific criteria, Lin necessarily fails to disclose or suggest other operations recited in claim 17, such as “automatically and dynamically reporting results of said analysis to the administration system,” “dynamically responding to said results when the performance of the portion of said network fails to conform with the predetermined application specific criteria,” and “wherein the reporting is dynamically triggered by the performance of the portion of said network failing to conform with the predetermined application specific criteria.”

Since Lin does not disclose at least the above-quoted features of claim 17, Lin does not anticipate claim 17. Independent claims 1 and 31 were amended to include features similar to those of claim 17 and, therefore, are not anticipated by Lin for at least the reasons set forth above. The dependent claims include all the features of the independent claims on which they are based and thus are not anticipated by Lin for at least the reasons set forth above. Therefore, it is respectfully requested that the rejection of the claims under 35 U.S.C. § 102(e) be withdrawn.

### **Rejection of the Claims under 35 U.S.C. § 103**

Claims 1-6, 9-11, 13-16, and 39 were rejected under 35 U.S.C. § 103(a) as obvious in view of Lin and Subramanian, U.S. Patent No. 5,519,707 (hereinafter “Subramanian”). Claim 12 was rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Subramanian, and Winokur, U.S. Patent No. 5,483,637 (hereinafter “Winokur”). Claims 26 and 40-41 were rejected under 35 U.S.C. § 103(a) as obvious in view of Lin and Winokur. Claim 7 was rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Subramanian, and Azarmi, U.S. Patent No. 5,906,715 (hereinafter “Azarmi”). Claim 8 was rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Subramanian, and Ross, GB2318479 (hereinafter “Ross”). Claims 21 and 35 were rejected under 35 U.S.C. § 103(a) as obvious in view of Lin and Azarmi. Claims 22 and 36 were rejected under 35 U.S.C. § 103(a) as obvious in view of Lin and Ross.

It is respectfully submitted that the claims are not obvious in view of the cited references for at least the following reasons.

As discussed above, Lin fails to disclose or suggest several of the features recited in independent claims 17 and 31 as amended. Subramanian fails to cure the deficiencies of Lin. Subramanian relates to “multiplexing of communications services on a virtual service path.” (Title). According to Subramanian, “The disclosed method and apparatus provides for efficient communication of service requests and service grants without requirement to establish new communication paths between the individual switches and the central service provider for each request.” (Abstract). Subramanian also states that “what is desired is to develop an improved ATM network or the like in which a supervisor or other service provider provides services to various devices in the network.” (Col. 3, lines 6-8).

Subramanian seems unrelated to dynamically analyzing information related to network performance. Further, Subramanian makes no mention of any predetermined application specific criteria. Thus, Subramanian fails to disclose or suggest the same features of the claims that are lacking in Lin.

Winokur, Azarni, and Ross are not cited as disclosing or suggesting any element of an independent claim.

Since Lin and Subramanian, considered alone or in combination, fail to disclose or suggest at least the above-quoted features of claim 1, claim 1 is not obvious in view of Lin and Subramanian. The dependent claims include all the features of the independent claims on which they are based and thus are not obvious in view of Lin and Subramanian for at least the reasons set forth above. Therefore, it is respectfully requested that the rejection of the claims under 35 U.S.C. § 103(a) be withdrawn.

### **Conclusion**

Applicant believes that all pending claims are allowable and respectfully requests a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set forth below.

Applicant does not believe that any additional fees are required to facilitate the filing of this Amendment. However, if it is determined that such fees are due, please charge such additional fees to Deposit Account No. 504480 (Order No. CISC120C1).

Respectfully submitted,  
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